

## **EXHIBIT 7**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: )  
 ) CA No. 01-12257-PBS  
PHARMACEUTICAL INDUSTRY AVERAGE )  
WHOLESALE PRICE LITIGATION ) Pages 1-88  
 )

SETTLEMENT HEARING

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
April 27, 2009, 2:15 p.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 3205  
Boston, MA 02210  
(617) 345-6787

## 1 A P P E A R A N C E S:

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Harold Carter, Roger Clark, Ethel Walters, Katie Bean, James  
Monk, Virginia Newell, Oral Roots, Rebecca Hopkins, and  
George Baker Thomson.

AUSTIN J. FREELEY, ESQ., 221 Lewis Wharf, Boston,  
Massachusetts, 021101, for James King.

## P R O C E E D I N G S

THE CLERK: In Re: Pharmaceutical Industry  
Average Wholesale Price Litigation, Civil Action 01-12257,  
will now be heard before this Court. Will counsel please  
identify themselves for the record.

MR. BERMAN: Good afternoon, your Honor. Steve  
Berman on behalf of plaintiffs.

MR. MATT: Good afternoon, your Honor. Sean Matt  
on behalf of plaintiffs.

MR. NOTARGIACOMO: Good afternoon. Ed  
Notargiacomo on behalf of plaintiffs.

MR. LANDRIGAN: Good afternoon, your Honor.  
Richard Landrigan on behalf of Patricia Weatherly.

MR. PENTZ: Good afternoon, your Honor. John  
Pentz on behalf of the Pentzes and Corinna Connick,  
objectors.

MR. COCHRAN: Your Honor, Edward W. Cochran on  
behalf of objector Corinna Connick and the Pentzes.

MR. MUEHLBERGER: Good afternoon, your Honor. Jim  
Muehlberger on behalf of Aventis Pharmaceuticals.

MR. MORGAN: Good afternoon, Your Honor. Peter  
Morgan for Baxter.

MR. BARLEY: Steve Barley for Amgen.

MR. WEXLER: Good afternoon, your Honor. Ken  
Wexler for the plaintiffs.

1 MR. EDELSON: Good afternoon, your Honor. Marc  
2 Edelson for the plaintiffs.

3 MR. KODROFF: Jeffrey Kodroff, also for the  
4 plaintiffs, your Honor.

5 MR. HAVILAND: Good afternoon, your Honor. Don  
6 Haviland for the named consumer plaintiffs.

7 MR. FREELEY: Good afternoon, your Honor. Austin  
8 Freeley for James Wilson, the objector.

9 MR. RASKIN: Good afternoon, your Honor. Richard  
10 Raskin for defendant Bayer Corporation.

11 MR. COHEN: Your Honor, Richard Cohen, TPP  
12 allocation counsel.

13 MR. EVERETT: Clay Everett for Pharmacia.

14 MS. SHANAHAN: Good afternoon, your Honor. Sara  
15 Shanahan for Watson.

16 MR. PALERMO: Good afternoon, your Honor. Chris  
17 Palermo for Dey.

18 MS. TABACCHI: Tina Tabacchi, your Honor, for  
19 Abbott Laboratories.

20 MR. DeMARCO: Michael DeMarco for Aventis.

21 MR. OCCHUIZZO: Mike Occhuizzo for Sicor.

22 MR. RONAN: Gary Ronan for Immunex.

23 MS. MCGUAN: Kathleen McGuan for Fugisawa.

24 THE COURT: All right, so have you worked together  
25 to figure out essentially an order for presentation? You

1 should probably present the settlement first. I hadn't  
2 quite realized -- I've received a lot of briefs, so there  
3 are one or two key issues I want to discuss, but there are  
4 also other multiple issues that I know have been raised in  
5 the pleadings. Have you discussed a timetable?

6 MR. BERMAN: We haven't, your Honor.

7 THE COURT: All right, we're going to go straight  
8 through till 4:00. I have a conference call, and then if I  
9 need to, I'll come back out. And then if we can't do that,  
10 then we'll have to set it up for maybe tomorrow morning or  
11 something, in other words, or whatever time, but I'm trying  
12 to get as much as I can done.

13 The two key issues -- actually, the number one  
14 most important issue in my mind that's worried me enormously  
15 is the cash payors. There is at least an argument -- well,  
16 first, I want to hear whether everybody here intends for  
17 them to be included, something I did not focus on at the  
18 time of the preliminary approval, and, if everyone agrees  
19 they should be included, whether or not a supplemental  
20 notice is necessary. That's a big issue for me. We also  
21 need to discuss attorneys' fees, and then there are myriad  
22 other things that have come up along the way. But I'm sure  
23 you will present all of this and more.

24 MR. BERMAN: I have some slides. If I might  
25 approach, your Honor?

1 THE COURT: Is the mike on so everyone can hear?

2 MR. BERMAN: Good afternoon, your Honor. Steve  
3 Berman on behalf of the class.

4 THE COURT: I think they probably can't hear, and  
5 there are so many people back there, so --

6 MR. BERMAN: Can you hear me back there?

7 THE COURT: No. At least two said they couldn't.  
8 Anyone who's got a serious problem is welcome to come and  
9 sit up in the jury box if you'd like to, but go ahead.

10 MR. BERMAN: What I thought I would do, your  
11 Honor, is to run through why we think the settlement should  
12 be approved, address the cash issue, and then address what I  
13 think are the highlights of the objections in my opening  
14 remarks, if that's okay with your Honor. Also,  
15 procedurally, we're going to have to do -- this can't be the  
16 final hearing because the Class 1 Part B class members have  
17 not gotten the individual notice yet. CMS --

18 THE COURT: There's no way they can hear you.

19 (Discussion off the record.)

20 MR. BERMAN: As I'm saying, there will have to be  
21 another approval hearing.

22 THE COURT: Everyone's nodding. It may be the  
23 only time I get that in this room.

24 (Laughter.)

25 MR. BERMAN: There will have to be another



1 approval hearing, so the best that we can do is to present  
2 the record as it exists today. And we will know more this  
3 week when we'll get the data, and we'll be in touch with the  
4 Court on that.

5 THE COURT: Well, do you have some sense of it,  
6 how many months?

7 MR. BERMAN: Well, they said they were going to  
8 get us the data this week, and then the question is whether  
9 it's adequate. We have already got it once; it wasn't  
10 adequate. So we're hoping that we can get it and we can get  
11 the process going shortly.

12 THE COURT: And that's only Class 1?

13 MR. BERMAN: That's correct.

14 So I thought I'd start off by talking about the  
15 reasonableness of the settlement amount of \$125 million.  
16 Prior to the trial -- and I'm talking about the trial we had  
17 of the Massachusetts class -- we had Dr. Hartman do a damage  
18 study for all the defendants, and his number came out at  
19 \$1.2 billion. It seems like a large number, but the trial  
20 altered the landscape.

21 So if you look at the defendants in the Track Two  
22 settlement, we have Amgen --

23 THE COURT: Is that all the defendants in  
24 Track Two or all the defendants in Track One and Track Two?

25 MR. BERMAN: Track Two only. And if you break

1 those defendants down into the brand-name drug defendants  
2 and the multi-source defendants, Dr. Hartman estimated  
3 \$316 million in damages from Amgen, Aventis, and Watson, and  
4 then roughly \$800 million from the remaining defendants.  
5 All are multi-source drugs.

6 So we had the trial, and we learned the road map  
7 from the trial. One of the important points in evaluating  
8 liability was evidence of spread marketing, and you recall  
9 the do-the-math type of documents that we spent a lot of  
10 time on at the trial. With respect to the multi-source  
11 defendants, there were no such documents. We had very  
12 little evidence that the multi-source defendants were busy  
13 marketing the spread. So we had a liability hole, a  
14 significant liability hole.

15 The other issue that we had to overcome, and which  
16 was really the big issue here, was the median issue, and  
17 I'll show you how that dramatically changes damages in this  
18 case. What I did in this slide here, Page 5, your Honor, is  
19 to take the original trial request of Bristol-Myers. We  
20 asked for \$4.9 million. You applied the median analysis,  
21 and you awarded \$388,000. For Class 3, it's a similar kind  
22 of result, 5 percent.

23 So if we then analyzed the -- and, of course, on  
24 Schering, we got nothing. So we looked at the possible  
25 results of another trial on Track Two. If we could be

1 zeroed out on some defendants, we might get 7 percent of  
2 what we thought the damages were, and BMS came out at about  
3 5. So if you use this as a guide, the range of damages for  
4 Track Two is somewhere between zero and \$40 million, not a  
5 big number.

6 Now, if you look at the settlement --

7 THE COURT: Just on the multi-source, right?

8 MR. BERMAN: Yes. If you look at the settlement  
9 and you apply percentages to the actual damages, the  
10 brand-name settlement of \$100 million is roughly 31 percent  
11 of Dr. Hartman's damage estimate. That's a very healthy  
12 number under the case law, where you see courts approving  
13 settlements 5 percent, 8 percent, and 10 percent.

14 If you look at the real multi-source damages where  
15 we have \$25 million allocated to that group, we're at  
16 62 percent of damages using a BMS type of analysis. That  
17 doesn't account for the fact that we might be zeroed out by  
18 some of these defendants, and we were pretty confident we  
19 would be on some of them.

20 So the settlement is a worthwhile settlement. It  
21 certainly meets the criteria as to the amount.

22 Now, let me turn to some of the objections because  
23 they go to fairness of the settlement. The first objection  
24 we got is that -- well, let me back up. From a consumer's  
25 standpoint, what does the settlement look like? Well, the